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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
Plaintiff)	
)	
vs.)	No. 1:19-CR-10080-NMG
)	
GREGORY COLBURN, et al.,)	
Defendants.)	
)	
)	
)	
)	

BEFORE THE HONORABLE NATHANIEL M. GORTON
UNITED STATES DISTRICT JUDGE
STATUS CONFERENCE

John Joseph Moakley United States Courthouse
Courtroom No. 4
One Courthouse Way
Boston, Massachusetts 02210

June 15, 2021
3:30 p.m.

Kristin M. Kelley, RPR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 3209
Boston, Massachusetts 02210
E-mail: kmob929@gmail.com

Mechanical Steno - Computer-Aided Transcript

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P R O C E E D I N G S

THE CLERK: This is Criminal Action No. 19-10080, the United States of America versus Gregory Colburn, et al.

Would counsel please introduce themselves for the record.

MR. FRANK: Steven Frank for the United States. Good afternoon, your Honor.

THE COURT: Good afternoon, Mr. Frank.

MS. KELLER: Good afternoon, your Honor. Jennifer Keller on behalf of Mr. Chen.

THE COURT: Miss Keller, good afternoon to you.

MS. MINER: Tracy Miner on behalf of Dr. Zadeh.

THE COURT: Miss Miner, good afternoon to you.

MR. KELLY: Good afternoon, your Honor. Brian Kelly and Lauren Maynard on behalf of Mr. Abdelaziz.

THE COURT: Mr. Kelly and Miss?

MR. KELLY: Maynard, bottom left square.

THE COURT: Unfortunately, your squares and mine don't coincide, but it's Miss Maynard, in any event, as well as Mr. Kelly for Mr. Abdelaziz; is that right?

MR. KELLY: That's right, your Honor.

THE COURT: Okay. Next.

MR. KENDALL: Good afternoon, your Honor. Michael Kendall, along with Andrew Tomback, for John Wilson.

THE COURT: Mr. Kendall and Mr. Tomback for

1 Mr. Wilson. Good afternoon.

2 MR. SCHUMACHER: Good afternoon, your Honor. David
3 Schumacher and Patric Hooper on behalf of Gregory Colburn and
4 Amy Colburn.

5 THE COURT: Mr. Schumacher?

6 MR. SCHUMACHER: Yes, and Patric Hooper is here as
7 well on behalf of the Colburn's.

8 THE COURT: All right. Thank you. That leaves a
9 representative for Miss Kimmel and Miss Palatella to go.

03:35 10 MR. BEIRNE: Good afternoon, your Honor. Eoin Beirne
11 for Miss Kimmel, along with Robert Popeo, Mark Robinson and
12 Cory Flashner.

13 THE COURT: All right. So it's Mr. Beirne,
14 Mr. Robinson, Mr. Popeo, and Mr. Flashner for Miss Kimmel,
15 correct?

16 MR. BEIRNE: Correct. Thank you, your Honor.

17 MR. DICANIO: Good afternoon, your Honor. Jack
18 DiCanio and Mr. Loucks for Miss Palatella.

19 THE COURT: All right.

03:35 20 Counsel, I understand that this videoconference,
21 status conference, is a public hearing and these proceedings
22 are being made available to members of the public, the press,
23 and interested parties via Zoom technology. Those attendees
24 are not, of course, permitted to participate in any other way
25 in these proceedings. I remind all of you who are attending

1 this videoconference that Federal Rule of Criminal Procedure 53
2 and local Rule 83.3 prohibit photographing, recording, and
3 broadcasting this proceeding, and any violation of these rules
4 will subject the wrongdoer to sanctions and/or loss of press
5 privileges.

6 Good afternoon again, counsel. As you are aware, this
7 case has been pending for more than 2 years. Trial dates have
8 been set and postponed on multiple occasions due to the
9 COVID-19 pandemic. A number of defendants have pled guilty and
03:36 10 one was pardoned. There's currently eight defendants
11 remaining, all of whom are set to go to trial in September of
12 2021.

13 In preparation for this status conference, I have
14 conferred at length with the Clerk's office to discuss the
15 feasibility of holding an eight defendant trial this fall and
16 have considered how to group the remaining defendants, should
17 two trials be necessary.

18 Before I announce my initial decisions on the upcoming
19 trial or trials, however, I will share my rulings with respect
03:37 20 to the pending motions to transfer by the defendants Amy
21 Colburn, Gregory Colburn and I-Hsin Chen, and the motion to
22 dismiss the indictment by the defendant Elisabeth Kimmel.

23 Having reviewed the parties' submissions, I will deny
24 both motions, dockets Nos. 1867 and 1877, with memoranda and
25 orders to follow. Actually, I entered a memorandum and order

1 with respect to the motion of the defendants Colburn and Chen
2 just a few hours ago in which I explain that decision.

3 As to Mrs. Kimmel, her motion to dismiss, docket
4 No. 1877, while the Court is sensitive to her medical
5 circumstances and will continue to monitor her condition, none
6 of the alleged constitutional violations warrants the dismissal
7 of the indictment. If anything, she has raised matters which,
8 if proved, could support a lawsuit under Section 1983.

9 Do counsel wish to address what I've said thus far? I
03:38 10 will hear you. Anybody wish to be heard?

11 MR. BEIRNE: Your Honor, we respect the Court's
12 ruling.

13 THE COURT: For the record, this is Mr. Beirne on
14 behalf of the defendant Kimmel, correct?

15 MR. BEIRNE: Yes, your Honor. Thank you. We had
16 evaluated the government's filing filed late last week and did
17 anticipate requesting permission from the Court to file a short
18 reply. If your Honor would entertain a reply, no fewer than
19 5 pages, we could get that to you in short order if you will
03:39 20 consider it. If you're inclined to simply rule, then so be it.

21 THE COURT: You certainly are entitled to submit a
22 further pleading on the matter. I guess it would technically
23 be a motion for reconsideration, but I will consider it if you
24 submit it quickly, because matters need to be resolved in this
25 case with so many defendants, and time is now of the essence.

1 If you wish to file a further pleading with respect to that
2 motion, do so. I will expect it by the close of business,
3 let's say, Friday, this Friday. I will reconsider that matter
4 to that extent, unless the government wishes to be heard
5 further in that regard.

6 Anything else from anybody else with respect to what
7 I've said thus far?

8 Hearing none, turning now to the trial that is
9 scheduled for September of this year. The Court, after due
03:40 10 deliberation, is satisfied that, in September, this Court will
11 be able to convene a multi-defendant criminal jury trial for up
12 to six defendants in the Moakley Courthouse. Indeed, the
13 Clerk's office anticipates that all of the COVID-19
14 restrictions will be lifted on or before Labor Day. In fact,
15 many of them have been lifted as of today, but they'll all be
16 lifted before Monday, September 6th, that is Labor Day, which
17 is just prior to the scheduled date for empanelment in this
18 case.

19 So, if in the near future the total number of
03:41 20 defendants whose cases remain unresolved is reduced to six, the
21 Court will proceed with a jury trial of all of the six
22 remaining defendants to commence, as scheduled, on September 8,
23 2021.

24 That said, the Court recognizes that proceeding with
25 eight defendants in a single trial poses unique logistical

1 problems and would prove very difficult regardless of COVID-19.
2 Accordingly, in the absence of a reduction of the number of
3 defendants, which neither side apparently expects, the Court
4 will re-sever the case.

5 The five remaining defendants who allegedly conspired
6 with Mr. Singer to, among other things, facilitate the
7 admission of their children through the so-called side door by
8 bribing athletic coaches and administrators will still be tried
9 together in September. Those defendants are the defendants
03:42 10 Abdelaziz, Kimmel, Palatella, Wilson, and Zadeh.

11 The remaining alleged so-called test cheating
12 defendants, that is the Colburn's and Chen, however, will be
13 tried together in January of 2021.

14 I will hear counsel with respect to what I have just
15 announced. Then I have a few other things to cover.

16 Anybody wish to be heard?

17 MR. KELLY: Your Honor, this is Brian Kelly on behalf
18 of the defendants. We were looking for some certainty as to
19 the guidance as to what the Moakley Courthouse could allow. If
03:43 20 the Court is, in fact, telling us there's room for six, I guess
21 there's room for six. As the Court has noted, we also have the
22 right to move to reconsider, and perhaps I should talk to my
23 co-counsel about this now that the Court has given us this
24 information. Perhaps we'll have five different volunteers.
25 Who knows? Hope springs eternal here. We understand your

1 ruling. We understand you're advising us clearly that the
2 courthouse can handle six, and your interest with going forward
3 with at least five in September.

4 THE COURT: And, of course, that does anticipate some
5 of the other matters that I was going to discuss. The
6 courtrooms may well need to continue to be adjusted. The plan
7 is that I will try this case in one of the larger of the
8 courtrooms. We may or may not have to utilize behind the bar
9 for tables. I think we're going to be able to have all counsel
03:44 10 and defendants in the so-called well. I may have to restrict
11 the defendants to one counsel at counsel table with his or her
12 client with backup counsel behind the bar. I'm not quite sure
13 how the logistics will work with the number of tables that
14 we'll be able to get into the bar.

15 Those are details that we will, of course, be working
16 on between now and September, but I am satisfied that whether
17 or not we have the tables in front of the bar or eliminate some
18 of the gallery seats and have tables behind the bar and then
19 have a satellite closed circuit courtroom next door available
03:45 20 for the public and other interested people, that remains to be
21 determined. We are satisfied that we are going to be able to
22 have jurors in the jury box, as we used to, without the
23 so-called social distancing of six or more feet by September,
24 and that we're going to be able to proceed in a manner that
25 will be sufficient to ensure an appropriate trial for all of

1 the parties that remain.

2 I need to discuss the deadlines that have previously
3 been scheduled. As you may recall, I entered an order back in
4 December, I believe it was, at which point I set deadlines
5 down. Two of those deadlines, of course, have already passed.
6 This is docket No. -- I'm afraid I don't have the docket
7 number. It's docket No. 1679, which was entered December 21st
8 of 2020. As you may recall, government's expert disclosures
9 were due Friday, May 28th. Reciprocal discovery from
03:46 10 defendants was due Monday, June 7th. All of the remaining
11 deadlines, of course, are still in the future.

12 Is there any problem with any of those deadlines that
13 counsel wishes to address?

14 MR. FRANK: Your Honor, on behalf of the government, I
15 would say, given the Court's ruling, now reducing the number of
16 defendants, we're going to have to adjust both our exhibit list
17 and witness list and could use a modest amount of additional
18 time to submit those, which would otherwise be due two days
19 from today, to pair those down.

03:47 20 I would also note that we did not file expert
21 disclosures. We don't intend to file expert disclosures, but
22 we have received very, very little in the way of reciprocal
23 discovery from the defense, nothing from several defendants. I
24 don't know whether that is because there is no reciprocal
25 discovery that they intend to produce to us, but it would be

1 helpful if we knew the answer to that.

2 MR. KENDALL: Your Honor, if I may be heard? Mike
3 Kendall for Mr. Wilson. When the Court consolidated us back
4 with Colburn, the Court noted that the deadlines were
5 suspended. We thought that applied to all defendants. There
6 are reciprocal discovery materials we need to supply to the
7 government. We need a little bit of time to put those together
8 now that the Court has affirmed the trial schedule. I think
9 that's the one deadline that we need to get set. I can't speak
03:48 10 for the other defendants. I don't know what their situation
11 is. Today's the 15th. If we could have until the 25th to get
12 everything organized and out.

13 THE COURT: You're cutting out a little bit. Did you
14 say the 22nd?

15 MR. KENDALL: 25th, your Honor, if that would be
16 acceptable to the Court.

17 THE COURT: What day of the week is the 25th?

18 MR. KENDALL: I think it's a Friday.

19 THE COURT: Okay. I will give all of the defendants
03:48 20 until the 25th to provide reciprocal discovery to the
21 defendants. I will also give the government until that same
22 date to file its list of exhibits and witness lists.

23 Then I will extend the deadline that called for the
24 defendants' expert disclosures to one week after the 25th. So
25 that would be July 2nd, am I right? That extends that deadline

1 slightly.

2 Then the remaining deadlines will remain the same.
3 That is the defendants' exhibits and the witness lists will be
4 due on Friday, July 16th.

5 The meet and confer on documents will be Wednesday,
6 July 21st.

7 Rebuttal expert disclosures on Wednesday, July 28th.

8 All parties' motions in limine, voir dire, and jury
9 instructions, that is your first effort at jury instructions,
03:49 10 will be due on Friday, July 30th. I will, of course, allow
11 supplemental jury instructions during the course of trial. I
12 do like to get your first efforts well in advance of trial so
13 that I can anticipate the legal issues, if any, that will
14 arise. I'm sure there will be several.

15 All responses to motions in limine, voir dire and jury
16 instructions by Friday, August 6th.

17 A final pretrial conference will be scheduled for
18 Wednesday, August 18th at 11:00 a.m.

19 All of these matters, as far as I'm concerned, can be
03:50 20 by remote, by videoconference, unless there is a reason why
21 they ought to be in person. I suppose at some stage it's going
22 to be helpful for counsel to be in the courthouse to see the
23 logistics and to understand the limitations we're going to be
24 under. I am perfectly willing to make that final pretrial
25 conference an in person trial conference, but I will hear

1 counsel as to whether or not that is appropriate.

2 Those are the matters that relate to the deadlines.
3 Again, any comments by any counsel?

4 MR. FRANK: Nothing for the government, your Honor.

5 MR. KELLY: Procedurally, Judge, I assume this is
6 maskless?

7 THE COURT: Yes, it is. We are maskless in the
8 courthouse for the first time in 15 months. It's very nice.
9 Now, let me say this. To the extent that anybody wants to wear
03:51 10 a mask, I'm not going to forbid it. I suppose I'll end up
11 telling the jurors, if they feel more comfortable in wearing
12 masks, they certainly can. I'm not going to allow witnesses
13 while testifying to wear masks. I'm not going to allow the
14 defendants in the courtrooms to wear masks, but other than
15 that, if somebody feels uncomfortable or has some special
16 reason why they believe they ought to be able to wear masks,
17 I'm going to be liberal in that regard. Please understand
18 that. There are no requirements to wear masks at any point in
19 the courthouse, whether in a courtroom or in the corridors
03:52 20 surrounding the courtroom and so forth.

21 Any other questions or comments?

22 MS. MINER: Tracy Miner on behalf of Dr. Zadeh.

23 THE COURT: Miss Miner.

24 MS. MINER: At least one pretrial subpoena still
25 outstanding. I've been pressing the recipients to hurry it up

1 and get us the documents. Obviously, we will use them as soon
2 as we get them. Hopefully, I will be able to get them by the
3 25th. I just wanted to alert the Court. We understand our
4 continuing obligations to disclose.

5 THE COURT: I urge counsel to try to avoid any of
6 those slippages in time because of the number of parties that
7 are involved when time is of the essence. Of course, we're in
8 the summer season when it's harder to get people assembled. If
9 there is anything the Court can do to assist in helping these
03:53 10 discovery problems -- of course Magistrate Judge Kelley has
11 been very helpful to this district judge throughout these
12 proceedings. She continues to be able, on a short notice, to
13 help you with any discovery issues. Bring them up sooner
14 rather than later. Okay?

15 MS. MINER: Yes, your Honor.

16 THE COURT: Let me see if I can --

17 MR. SCHUMACHER: Your Honor, this is David Schumacher
18 for the Colburn's, your Honor.

19 THE COURT: It's Mr. Schumacher?

03:54 20 MR. SCHUMACHER: Yes, your Honor. David Schumacher
21 for the Colburn's. Does your Honor have a date in mind for
22 January for the second trial in the event the group remains?

23 THE COURT: Yes. I'm going to issue an order
24 relatively quickly in that regard. I think I did put this
25 down. I have put down in another piece of paper all of the

1 dates, which, of course, correspond virtually identically in
2 terms of times before trial for each of these deadlines. I
3 believe we have scheduled the final pretrial conference for
4 Wednesday, January 5, 2022, at 11 a.m., with jury empanelment
5 on Tuesday, January 11th at 9 a.m., with the jury trial to
6 start as soon after empanelment as possible.

7 MR. SCHUMACHER: Is it fair to say, your Honor, that
8 the other pretrial deadlines will be the similar length before
9 trial?

03:55 10 THE COURT: Yes. Exactly. I believe the first one is
11 the government's expert disclosures by Thursday, September 2nd.

12 MR. SCHUMACHER: Thank you, your Honor.

13 THE COURT: We'll get that order out relatively
14 quickly. I'm going to defer on it just for a short period of
15 time in the unlikely event that there are any further movement
16 toward resolution of any of the defendants and give you a
17 little bit of time to think about that. These orders will go
18 out relatively quickly.

19 MR. KENDALL: Your Honor, may I jump in for two quick
03:55 20 things?

21 THE COURT: Mr. Kendall, yes.

22 MR. KENDALL: Yes. Thank you. The first is we had
23 filed an earlier motion for severance based upon the factual
24 differences in the evidence and the witnesses between our case
25 and the other co-defendants. I would like to renew that

1 motion.

2 To put it succinctly, and I think in terms of the
3 issues most important to the Court, Wilson is charged with a
4 tax case and Wilson's facts do not arise from Donna Heinel and
5 a certain set of events that the other sub co-defendants, the
6 four of them, have. Wilson's son, as you may remember,
7 actually was a member of the U.S.C. water polo team and came in
8 through a different way, being recruited by the coach.

9 Bottom line, what I think is most relevant to the
03:56 10 Court, Wilson's case adds at least one week of trial with
11 defendants that are not relevant to anybody else. If we're --
12 the government estimates it's three weeks for its case and
13 three weeks for the defense case. There's another week for
14 Wilson issues that every other defendant will be sitting on
15 their hands and having -- there's two tax preparers, a
16 bookkeeper, a government IRS agent, a defense tax expert to
17 respond and others. I would just like your permission to file
18 that motion to sever based on the trial schedule.

19 THE COURT: Mr. Frank?

03:57 20 MR. FRANK: Your Honor, I don't think we have anything
21 new to say on the subject. There will be tax evidence with
22 respect to other defendants who are not specifically charged
23 with tax counts. There's going to be an IRS witness. In any
24 event -- so we don't expect -- we contemplated all that in the
25 schedule that we set forth to the Court. We just disagree that

1 it's going to add so meaningfully to the trial.

2 THE COURT: Mr. Kendall, if you're going to file a
3 motion to reconsider, it will be filed promptly. It will be no
4 more than 10 pages.

5 MR. KENDALL: Thank you, your Honor.

6 The other issue is, not to bid against myself, but if
7 my motion does not prevail on the Court, there's a couple of
8 Jewish holidays in September. We'd like to file a supplemental
9 note to the Court of maybe one day for Yom Kippur and 1 day for
03:58 10 Rosh Hashanah.

11 THE COURT: I am very cognizant of that, Mr. Kendall,
12 although I don't have the dates in mind. I will certainly
13 honor any requests to avoid trial on the High Holy Days in
14 September. I was under the impression that one of them is
15 early this year and we weren't going to conflict with Rosh
16 Hashanah.

17 MR. KENDALL: At one point, you discussed doing jury
18 selection a week before, starting on September 8th. If that's
19 still the Court's preference -- sorry -- the week before
03:58 20 September 12th. If you started early jury selection, it's an
21 issue.

22 THE COURT: When is Rosh Hashanah this year?

23 MR. KENDALL: I'd have to check. I think it's
24 probably around the 8th or so.

25 THE COURT: If it's the 8th, then we will avoid the

1 8th.

2 MR. KENDALL: That's all I'm asking.

3 THE COURT: And start the empanelment on the ninth. I
4 think I looked at it one time and I can't remember either. We
5 will certainly honor that request, one day for Rosh Hashanah
6 and one day for Yom Kippur, is that correct?

7 MR. KENDALL: That's fine with me. I discussed it
8 with Mr. Frank. I think it's fine with the government.

9 MR. FRANK: It's correct. I checked with Rabbi
03:59 10 Google. It's the night of September 6th and full day of
11 September 7th is the first day of Rosh Hashanah.

12 THE COURT: So the 8th will be available for
13 empanelment?

14 MR. FRANK: There are some folks who would perhaps
15 observe both days, but I don't think that's an issue here.

16 THE COURT: Mr. Kendall, you said it was not an issue
17 with you?

18 MR. KENDALL: Won't be this year, your Honor, but it
19 usually is.

03:59 20 THE COURT: If anybody else has a problem, I think I
21 had conservatively suggested that we start empanelment on the
22 8th because that leaves three days that week to complete
23 empanelment. If it is necessary to avoid the 8th and just do
24 empanelment on Thursday and Friday, the 9th and 10th, we'll do
25 that, but I would prefer to start on the 8th so that we can

1 complete for sure by the end of that week and, therefore, be
2 able to start with the evidence in the case on Monday,
3 September 13th. If anybody has any problem with the 8th, I
4 urge you to file sooner rather than later. Okay?

5 MR. KENDALL: Thank you, your Honor.

6 THE COURT: All right. I did want to discuss with the
7 government the anticipated length of trial, which, as I
8 understand it, you believe, Mr. Frank, is going to be six or
9 7 weeks. I don't understand why it should take us that long,
04:01 10 especially if we have five defendants and not eight. Can you
11 explain that for me?

12 MR. FRANK: Your Honor, we were a little bit generous,
13 but we were assuming about two and a half to three weeks on the
14 government's direct case. So we just assumed an equal amount
15 of time for cross.

16 THE COURT: Are you meaning you're only adding up the
17 number of hours that your witnesses are going to be on direct
18 examination and not anticipating that, of course, each one of
19 your witnesses will be cross-examined probably for about the
04:01 20 same amount of time that they're on direct?

21 MR. FRANK: That's right. That's why we came up with
22 the longer.

23 THE COURT: Usually, when I get an estimate from the
24 government as to how long a trial is going to be, they throw
25 into their estimate an estimate of equal time for

1 cross-examination. When they say their case is going to take
2 three weeks, that means they're going to be on the stand for a
3 week and a half on direct examination and their witnesses are
4 going to be on the stand for a week and a half on cross.
5 You're telling me three weeks is all direct examination. Is
6 that what you're saying?

7 MR. FRANK: We did have a footnote, but yes, your
8 Honor. We believe two and a half to three weeks on direct
9 examination and an equal amount of time for cross-examination
04:02 10 given the number of defendants.

11 THE COURT: That's anticipating that the defendants
12 aren't going to have any case at all of their own.

13 MR. FRANK: That did not include time for a defense
14 case. That's because, in the five defendant trial, we are
15 putting in evidence of both aspects of the scheme, your Honor.

16 THE COURT: Any of the defendants wish to be heard on
17 the question of the length of trial?

18 Okay. Silence.

19 As you probably all know, I usually put time limits on
04:03 20 civil cases. I've never done it on a criminal case, but my
21 colleague, Judge Stearns did it, and nobody appealed, and it
22 wasn't reversed. So guess what? I'm considering, as a last
23 resort, considering time limits on both the government and the
24 defendants in this case. If it can't be -- if I can't be
25 convinced that counsel are going to work as hard as they can to

1 keep this case within reason, as counsel I'm sure are aware, if
2 jurors get to the point where they think one party or the other
3 is the reason they're having to spend more time than they think
4 is necessary to hear a case, they hold it against the party
5 that's keeping them in the jury box. You're all astute,
6 excellent trial lawyers, and you know that. You know that when
7 you have two witnesses that can present the evidence that you
8 need on your side of the case instead of four, you're better
9 off eliminating those other two witnesses. You don't get
04:04 10 100 percent of all of the testimony that you want, but
11 96 percent is a lot better than offending 12 jurors who are
12 going to decide your case.

13 I don't think this case needs to take six or
14 seven weeks, especially now that it's reduced to five
15 defendants. I'm going to consider ways to do that, whether or
16 not that involves time limits. I just think counsel have got
17 to think long and hard about how they reduce the number of
18 witnesses that they're calling in this case so that we don't
19 keep people from their livelihood for any longer than they have
04:05 20 to be kept.

21 MR. KELLY: Your Honor, on behalf of --

22 THE COURT: Mr. Kendall.

23 MR. KENDALL: I have had the pleasure of trying those
24 two time limit cases with Judge Stearns, as well as Mr. Frank.
25 I want to raise two concerns, one that can be helpful and one

1 that can be an impediment. The one thing that Mr. Frank noted,
2 you're not trying the people who are the test takers in our
3 case, but he wants to put in the test taker evidence. That's
4 going to take a chunk of time. Nobody accuses any of our five
5 clients of having children who cheated or did anything improper
6 on their SAT scores, and yet he wants to put in that evidence
7 somehow to associate it with us even though we had no role in
8 it. I think that's a place to save time, and we'll file a
9 motion in limine if the issue is not addressed before that time
04:05 10 period.

11 MR. FRANK: I can respond to that, your Honor.

12 MR. KENDALL: Let me finish, please, Mr. Frank.

13 THE COURT: You may respond to that issue, Mr. Frank.

14 MR. KENDALL: The second issue, your Honor, is that in
15 the two trials we had with Judge Stearns, it was four
16 defendants who basically had one set of facts and there was a
17 lot of cohesiveness in their facts and their issues. What we
18 have here is five defendants who had never done anything with
19 Singer together. Each one had their own relationship with
04:06 20 Singer. So each one of the five is going to have to do crosses
21 because it's a different set of conversations, a different set
22 of tapes. It's a different set of facts for each of the five
23 parents. So there's a good thing and a bad thing. I just
24 wanted to make the Court aware of.

25 THE COURT: Thank you, Mr. Kendall.

1 Mr. Frank.

2 MR. FRANK: Just briefly, your Honor. Mr. Kendall is
3 mistaken. There is a defendant in the five defendant case,
4 Miss Palatella, who is charged with participating in both
5 aspects of the scheme, both the test taking and the side door
6 aspect of the scheme. That's why we need to put in evidence
7 concerning both in that trial.

8 Conversely, your Honor, even if the Court were to
9 configure the defendants separately, that would mean two longer
04:07 10 trials because of the side door aspect of the scheme requiring
11 more evidence, and that would expand the other trial. This is
12 the more efficient way if the trials are to be severed.

13 Mr. Kendall is right. We did have trial limits before
14 Judge Stearns. In both of those cases, the government came
15 well under the trial limits and, unfortunately, it was the
16 defense that went over the time limits. We will endeavor to do
17 the same here. We gave an initial estimate, it's early, of two
18 to three weeks. We will do everything to streamline that and
19 get this case as efficient as possible.

04:07 20 MR. KELLY: Your Honor, Brian Kelly on behalf of
21 defendant Abdelaziz. I don't want the Court to think we are
22 acquiescing to time limits. We will object to that. We
23 understand what the Court is saying. We will cut to the chase.
24 We don't want to inundate the jury with the same non-sense, but
25 with five defendants it's the government who has the advantage

1 if there are time limits. We think it would act to our
2 disadvantage if we were somehow cabined in on time. At least
3 at this point, that's my reaction to the Court's proposal.

4 THE COURT: Mr. Kelly, I didn't say that I would
5 automatically give you equal time. If you gave me good reason
6 why the defendants should have more time than the government, I
7 would hear you. In other words, it isn't automatic that the
8 defendant and the government, defendants plural, and the
9 government automatically get the same amount of time to present
04:08 10 their respective cases.

11 MR. KELLY: Okay. If there's five of us and one of
12 them, maybe that's --

13 THE COURT: I'm not going to make it five to one
14 either.

15 MR. KELLY: The other thing, as AUSA Frank said, the
16 Palatella case involved the testing and not the donation
17 allegations. So perhaps if the Court wants to streamline it
18 further, we should go four and four.

19 THE COURT: Okay.

04:09 20 MR. DICANIO: Your Honor, this is Jack DiCanio. If I
21 could respond. Your Honor, there is a submission that we would
22 like to make to the Court now that we have a better sense of
23 what is possible in terms of capacity and also the groupings
24 that your Honor has put together. Your Honor, there are
25 aspects to our submission though that would be revealing our

1 defense strategy. So we'd like to have an opportunity to
2 consider that and then submit something to your Honor to talk a
3 little bit about Miss Palatella's unique position in all of
4 this as it relates to the other trials as well.

5 THE COURT: Are you asking me again to file something
6 ex parte?

7 MR. DICANIO: Your Honor, we did submit something this
8 morning and your Honor rejected. The reason for the ex parte
9 is part of what we wanted to file was to give the Court a
04:10 10 little bit of a better understanding as to our proposal and the
11 why behind it. Your Honor, that would really reveal some
12 defense strategy and trial strategy as to how we're going to --

13 THE COURT: Mr. DiCanio, we're close upon trial now.
14 Your trial strategy is going to have to be revealed, whether
15 it's a week, a month or six weeks before trial. We're beyond
16 the point now of having these intrigues of everybody wanting me
17 to take something ex parte. This is the adversary system.
18 You're going to have to reveal your plans, just as Mr. Frank is
19 going to have to reveal his.

04:10 20 I would discourage you. You are certainly entitled to
21 file anything you want to file, but there is a point of no
22 return where it seems to be counterproductive. I think it's
23 getting to that point. We're hard upon trial in a
24 multi-defendant case that's been pending for over 2 years.
25 This matter needs to be resolved.

1 MR. DICANIO: Understood, your Honor. Obviously,
2 we'll be prepared whatever the Court ultimately rules. We did
3 understand the reason for your denial of our ex parte, so if we
4 file something, we will file it publicly, and we'll consider
5 kind of how to move forward with that.

6 Your Honor, I do think it presents some issues that we
7 would like to consider bringing to the Court's attention and,
8 obviously, we would submit to your discretion as to how to deal
9 with Miss Palatella, who really is in both cases. She is a
04:11 10 little bit different. But there are other reasons that make
11 her very, very different from everybody you see in this screen.
12 I think we want to consider raising that to your Honor and have
13 you consider it.

14 THE COURT: Okay. Fair enough.

15 MS. KELLER: Your Honor, on behalf of Mr. Chen, may I
16 make a request to the Court?

17 THE COURT: Yes. Hold on a second. I like to keep
18 track of who is addressing me. This is Miss Keller?

19 MS. KELLER: Yes, your Honor. Your Honor, I realize
04:12 20 that a federal criminal jury trial is going to take priority
21 over this, but I do have a major civil trial set January 3rd in
22 California. It involves about a half a billion dollars in
23 damages, so it is a major trial. I would request that the
24 Court either put this matter over until February instead of
25 January or if the Court is not inclined to do that, if the

1 Court could -- if the Court ordered me to be available to try
2 this case starting January 11th and not to be engaged in any
3 other matters before that, it would be helpful to me.

4 THE COURT: I will so enter an order of this case that
5 is now over two years. A criminal case over two years old
6 takes precedent. If you need something, why don't you send my
7 deputy clerk what it is you need, and I will enter it.

8 MS. KELLER: Thank you very much, your Honor.

9 THE COURT: You're welcome.

04:13 10 Anybody else on any logistics matters that we haven't
11 discussed thus far? We will certainly, of course, be
12 discussing many more of them at the final pretrial conference,
13 at which time we will go over the method of empanelment which,
14 of course, may well be a little different on this case than on
15 my standard cases.

16 For instance, I am going to probably have what I would
17 call an individual voir dire on questions of scheduling
18 matters, in other words, people that are or are not going to be
19 able to serve for six or seven weeks as jurors and any bias
04:14 20 questions as to pretrial publicity. I think I'm going to go
21 through those individually, try to clear the entire jury pool,
22 and then proceed from that point to a more or less normal
23 empanelment. The way I do it, and I think some of you are
24 aware of how I empanel jurors, that's for a later time. I will
25 be getting together my methodology as to how we're going to

1 empanel in this case more thoroughly during the next month. We
2 will be able to consider that in much more detail at a later
3 time.

4 Is there anything else then that needs to come to my
5 attention with respect to this status conference at this time?

6 MR. FRANK: Not for the government, your Honor. Thank
7 you.

8 THE COURT: Not from the government, Mr. Frank.
9 Anybody else?

04:14 10 MR. KENDALL: One small thing.

11 THE COURT: Yes, Mr. Kendall.

12 MR. KENDALL: I misspoke when I referred to the
13 Palatella case. I want to apologize to the Court for that. I
14 thank Mr. Frank for correcting me.

15 THE COURT: That's all right. Anybody else?

16 All right. Thank you, counsel. I will be entering
17 orders consistent with the comments that I've made in this
18 status conference. And anybody who has motions to reconsider
19 anything that I have said is forewarned to file those very
04:15 20 promptly. I will deal with them as promptly as I can.

21 Thank you, counsel. Have a nice rest of the week.
22 We're adjourned.

23 (Whereupon, the proceedings adjourned at 4:15 p.m.)
24
25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)

I, Kristin M. Kelley, certify that the foregoing is a
correct transcript from the record of proceedings taken
June 15, 2021 in the above-entitled matter to the best of my
skill and ability.

/s/ Kristin M. Kelley

June 17, 2021

Kristin M. Kelley, RPR, CRR
Official Court Reporter

Date